**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 719 of 1985**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NILESH MADHUBHAI PATEL - Appellant(s)**
**Versus**
**RAFUBHA NANABHA PARMAR & 2 - Defendant(s)**

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**Appearance :**
MR JM BAROT for Appellant,
NONE for Respondent Nos.1 & 3.
MR VC THOMAS for Respondent No.2.

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 24/08/2007**

**ORAL JUDGMENT**

1. Mr.J.M. Barot, learned counsel for the appellant and Mr.V.C. Thomas, learned counsel for the respondent No.2. None for the respondent Nos.1 and 3.
2. The appellant, being aggrieved by the award dtd.30/5/1984 passed by the Motor Accident Claim

Tribunal (Main), Kheda at Nadiad in Motor Accident Claim Petition No.3 of 1983, is before this Court with a submission that the tribunal was unjustified in awarding less amount qua entitlement of the claimant. In absence of any Cross Objection or Cross Appeal, this Court is not required to detail the facts. The court is not required to consider the question of rashness, negligence and liability of the driver and the Insurance Company.

3. A polio affected cyclist was crushed by a truck which led to various injuries. On the physical examination, fracture over pelvis and lower abdomen, contusion of bladder, retro-peritoneal haemorrhage, rupture of right kidney, abrasions over right groin, abrasions over right lumber region, and abrasions over hands were found. The injured was treated time and again and ultimately his right kidney had to be removed because of the injuries suffered. Even according to the findings of the tribunal, the claimant has become glassware who would require a permanent care.

4. Mr.Barot, learned counsel for the appellant, after taking me through the evidence submitted that the tribunal was unjustified in holding that the applicant could only earn a sum of Rs.600=00 and the loss of the future income

would be Rs.150=00 per month. According to him, the claimant who was a young boy of 21 years had much to see in the life and because of the injuries, his future was badly and adversely affected. He submits that under the head of non-pecuniary loss i.e. pain, shock and suffering, the tribunal erred in awarding Rs.37,500=00 only and further erred in awarding a sum of Rs.27,000=00 towards future loss of earning. According to him, the claimant was entitled to the amount as claimed in the claim petition.

5. Mr.V.C. Thomas, learned counsel for the respondent Insurance Company, however, submitted that the claim made by the claimant was inflated and exaggerated, the claimant could not prove that he could earn a sum of Rs.600=00 or more despite that the tribunal has held that the claimant could earn a sum of Rs.600=00 and the future loss would be Rs.150=00. He also submitted that the tribunal was justified, rather, was more gracious in awarding Rs.37,500=00 under the head of pain, shock and suffering and a sum of Rs.27,000=00 under the head of future loss of earning.

6. From the evidence available on the records, it clearly appears that the claimant had undergone various operations, his right kidney had been removed and for

rest of the life, he is left to be a victim of intestinal obstruction. the tribunal also found that the person who was handicapped, has suffered further injuries which have made his life hell. The tribunal has also observed that the claimant will have to be absolutely careful and cautious in his life and it would be almost impossible for him to enjoy the fruits of the life.

7. In the opinion of this Court, looking to the nature of the injuries, the tribunal would be justified in holding that the claimant would not be in a position to enjoy his life as an ordinary man or even as a polio affected man, if he eats anything more or tries to relish, he would be affected by intestinal obstruction, he has already lost his kidney and has become prone to further ailment. Under the head of pain, shock and suffering and future enjoyment of the life, in my opinion, he must get an amount of Rs.22,500=00 in addition to what he has already got.

8. So far as the future loss of income is concerned, I can not hold future income to be Rs.600=00 per month. In the year 1982-83, if a Clerk was to receive Rs.600=00, then, after a period of 15 years i.e. somewhere in 1997-98, he would have received a sum of Rs.7000=00 to 9000=00 as the salary. I would be justified in holding the future

income or the income which the claimant could earn would be Rs.1200=00 per month. The tribunal has taken future loss of earning at 25%, I would also take it to be 25%, but that would be of the income of Rs.1200=00. In addition to what the tribunal has already allowed in favour of the claimant, he would be entitled to Rs.150=00 per year or Rs.1800=00 per month or a sum of Rs.27,000=00 with application of multiplier of 15.

9. In view of the discussion aforesaid, the appellant would be entitled to an additional sum of Rs.49,500=00. The respondents would be jointly and severally liable to pay the said amount to the claimant with 6% interest from the date of the claim petition till realisation.

10. The appeal to the extent indicated above is allowed. No costs.

(R.S. GARG, J.)

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